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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

MM Docket No. 93-94

File No. BRCT-910603EX

),

and

File No. BPCT-910903KE

For a Construction Permit for a  
New Television Facility on  
Channel 2 at Baltimore, Maryland

## OPPOSITION TO RENEWAL BROADCASTING CLAIM OF SCRIPPS HOWARD BROADCASTING COMPANY

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of witnesses expected to testify." (Prehearing Conference Order, para. 5).

2. The Scripps Howard pleading fails to specify with any degree of clarity the relevant renewal period for which Scripps Howard claims a renewal expectancy. Indeed, the pleading refers vaguely to approximately four different periods of time without providing any specific framework. First, Scripps Howard states that it "will claim a renewal expectancy for Station WMAR-TV principally for the period from May 30, 1991, the date Scripps Howard took control of WMAR-TV, through September 30, 1991, the end of the station's license term." (Renewal Expectancy Claim, p. 1, emphasis added). Second, Scripps Howard acknowledges that "Commission precedent suggests that the date a competing application is filed (here September 3, 1991) should set the end date for consideration of a licensee's renewal expectancy showing." Id. Third, Scripps Howard indicates that it intends to offer a showing of how it has implemented its plans for the station's programming and ascertainment performance by "a continuation and appropriate evolution of programming" under Scripps Howard's ownership. Id. at pp. 2-3. Fourth, Scripps Howard claims that it will offer a description of the level of programming offered by WMAR-TV during the period before Scripps

that the latter undefined period of time is the period for which Scripps Howard is really intending to claim a renewal expectancy.

3. The Prehearing Conference Order set a date certain by which Scripps Howard was obligated to specify the relevant renewal period, just as it set a date certain for the filing of an Integration Statement. The Prehearing Conference Order was released on April 6, 1993 - a month prior to the date that Scripps Howard had to file its Renewal Expectancy Claim, so Scripps Howard had ample time to clarify any questions it might have had. Since Scripps Howard has failed to clearly specify the relevant renewal period, it should be denied any renewal expectancy credit.

4. Moreover, Scripps Howard's interpretation of Commission case precedent is erroneous. It is very clear from the Commission's Memorandum Opinion and Order in Video 44, 6 FCC Rcd 4948 (1991), that if Scripps Howard is entitled to claim any renewal expectancy, the relevant license renewal term commences on May 30, 1991, the day Scripps Howard acquired WMAR-TV, and that the relevant license term ends on September 3, 1991 - the day Four Jacks' application was filed. In Video 44, the Commission stressed that it "has long declined to give credit for a licensee's post-term upgrading. We have held that it would undermine licensee accountability to permit a licensee to evade the consequences of its deficient performance by upgrading after

challenges had been filed." 6 FCC Rcd at 4950 and cases cited

therein. The Commission also held that Video's post-term record was "simply irrelevant." Id.<sup>1/</sup>

5. Scripps Howard implies that its receipt of actual notice of the filing of the Four Jacks application was "substantially delayed" because Four Jacks did not serve it with

Seattle Public Schools, 4 FCC Rcd 625, 638-39 (Rev. Bd. 1989)

("Renewal expectancies are available only to incumbent licensees").

7. Apparently, Scripps Howard's attempt to greatly expand the "relevant renewal period" stems from its concern that the period during which it operated Station WMAR-TV begins on May 30, 1993 and ends on September 3, 1993 - a period of approximately ninety (90) days. However, Scripps Howard is not entitled to any sympathy for its business decision rushing to close a major market acquisition on the eve of the filing of the station's license renewal application. Scripps Howard is not entitled to a renewal expectancy any different from existing Commission precedent. Surely, Scripps Howard evaluated the risk of taking over a broadcast station with only a short period remaining in the license term.

8. Finally, the "Renewal Expectancy Claim" filed by Scripps Howard states that "approximately 40 witnesses are expected to testify on the issue of renewal expectancy." However, since the period of time for which Scripps Howard seeks a renewal expectancy is vague, it is also not clear that all 40 witnesses would have relevant knowledge. At most, Scripps Howard would only be entitled to claim renewal expectancy credit for a period of approximately ninety (90) days in 1991, and it is doubtful that all 40 witnesses would testify concerning this period of time.

Accordingly, for the foregoing reasons, the "Renewal Expectancy Claim" advanced by Scripps Howard is fatally uncertain

and should be rejected. Assuming, arguendo, that Scripps Howard is given an opportunity to offer any evidence concerning renewal expectancy, it should be limited to the period May 30, 1991 through September 3, 1991, as it grudgingly concedes in its pleading.

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Respectfully submitted,

FOUR JACKS BROADCASTING, INC.

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Date: May 13, 1993

3070-014.020

CERTIFICATE OF SERVICE

I, SYBIL R. BRIGGS, do hereby certify that I have this 13th day of May, 1992, mailed by first class United States mail, postage prepaid, copies of the foregoing "OPPOSITION TO RENEWAL BROADCASTING CLAIM OF SCRIPPS HOWARD BROADCASTING COMPANY" to the following:

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